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6 Attorneys for Defendants

7 CONTRA COSTA COUNTY,

JOHN GIOIA, MARY PIEPHO,

8 GAYLE UILKEMA, FEDERAL GLOVER,

and SUSAN BONILLA

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

14 CHARLES EVANS II individually,

15 Plaintiff,

16 v.

17 CONTRA COSTA COUNTY, a municipal  
18 corporation; JOHN GIOIA individually  
19 and in his Official Capacity as County  
20 Supervisor; MARY PEIPHO individually  
21 and in her Official Capacity as County  
22 Supervisor; GAYLE ULKEMA  
23 individually and in her Official Capacity as  
County Supervisor; FEDERAL GLOVER  
individually and in his Official Capacity as  
County Supervisor; SUSAN BONILLA  
individually and in her Official Capacity as  
County Supervisor,

24 Defendants.

No. C 08 - 01697 JL

DEFENDANT CONTRA COSTA  
COUNTY'S ANSWER TO COMPLAINT

JURY TRIAL DEMANDED

25 Defendant Contra Costa County answers plaintiff's complaint as follows:

26 1. Answering paragraph 1 of said complaint, said defendant admits this court has  
27 jurisdiction of this action.  
28

1           2. Answering paragraph 2 of said complaint, said defendant admits this action is  
2 properly venued in this court pursuant to 28 U.S.C. § 1391(b). Except as specifically so  
3 admitted, said defendant denies each and every allegation of said paragraph 2.

4           3. Answering paragraph 3 of said complaint, said defendant admits the allegations of  
5 said paragraph.

6           4. Answering paragraph 4 of said complaint, said defendant admits the allegations of  
7 said paragraph.

8           5. Answering paragraph 5 of said complaint, said defendant admits the allegations of  
9 said paragraph.

10          6. Answering paragraph 6 of said complaint, said defendant admits that Contra Costa  
11 County was and is at all times alleged in the complaint a political subdivision of the State of  
12 California, as provided by Constitution and laws of said State. Except as specifically so  
13 admitted, said defendant denies each and every allegation of said paragraph 6.

14          7. Answering paragraph 7 of said complaint, said defendant admits that on  
15 February 14, 2003, plaintiff filed in this court an action naming among others Contra Costa  
16 County and certain employees of Contra Costa County as defendants, and further admits said  
17 action was alleged to arise under, among other laws, section 1983 of Title 42 of the United  
18 States Code, and further admits that on May 24, 2004, said action was dismissed by this court  
19 on the stipulation of the parties following the agreement of the parties to terminate the action.  
20 Except as specifically so admitted, said defendant denies each and every allegation of said  
21 paragraph 7.

22          8. Answering paragraph 8 of said complaint, said defendant denies each and every  
23 allegation of said paragraph 8.

24          9. Answering paragraph 9 of said complaint, said defendant admits that plaintiff has  
25 from time to time during the period October 31, 2006 to September 27, 2007 appeared at the  
26 regular public meeting of the Contra Costa County Board of Supervisors, and at such  
27 meetings, has from time to time requested to address said Board on agenda items. Said  
28 defendant further admits that on account of clerical error, an agenda item was acted on by the

1 Board before plaintiff's address to the Board on that item was delivered. Except as specifically  
2 so admitted, said defendant denies each and every allegation of said paragraph 10.

3 10. Answering paragraph 10 of said complaint, said defendant admits that on  
4 March 29, 2007, plaintiff submitted a claim to the Board of Supervisors of Contra Costa  
5 County, and further admits that on May 1, 2007, said Board rejected said claim in full. Except  
6 as specifically so admitted, said defendant denies each and every allegation of said paragraph  
7 10.

8 11. Answering paragraph 11 of said complaint, said defendant lacks sufficient  
9 information on which to form a belief as to the truth or falsity of the allegations of said  
10 paragraph, and on that basis, said defendant denies each and every allegation of said paragraph  
11 11.

12 12. Answering paragraph 12 of said complaint, said defendant denies each and every  
13 allegation of said paragraph 12.

14 13. Answering paragraph 13 of said complaint, said defendant admits the official  
15 actions of the Board of Supervisors and other officials of Contra Costa County, performed  
16 within the scope of their authority and on behalf of said County, are done under color of law.  
17 Except as specifically so admitted, said defendant denies each and every allegation of said  
18 paragraph 13.

19 14. Answering paragraph 14 of said complaint, said defendant admits the official  
20 actions of the Board of Supervisors and other officials of Contra Costa County, performed  
21 within the scope of their authority and on behalf of said County, are done under color of law.  
22 Except as specifically so admitted, said defendant denies each and every allegation of said  
23 paragraph 14.

24 15. Answering paragraph 15 of said complaint, said defendant admits the official  
25 actions of the Board of Supervisors and other officials of Contra Costa County, performed  
26 within the scope of their authority and on behalf of said County, are done under color of law.  
27 Except as specifically so admitted, said defendant denies each and every allegation of said  
28 paragraph 15.



1 and damages sought by the plaintiff are in excess of and different from what was claimed in  
2 the claim presented to this answering defendant pursuant to California Government Code  
3 section 910.

4 24. Further answering the complaint and the separate causes of action thereof, and as a  
5 further, separate and distinct affirmative defense thereto, said defendant alleges that answering  
6 defendant and its employees are not liable to plaintiff pursuant to the provisions of California  
7 Government Code sections 815.2 and 820.8, in that the liability alleged against defendant's  
8 employee is based on the acts and/or omissions of other persons.

9 25. Further answering the complaint and the separate causes of action thereof, and as a  
10 further, separate and distinct affirmative defense thereto, said defendant alleges that answering  
11 defendant and its employees are immune from civil liability pursuant to the provisions of  
12 California Government Code sections 815.2 and 820.2 on the grounds that the acts and/or  
13 omissions alleged in the complaint involved the exercise of discretion.

14 26. Further answering the complaint and the separate causes of action thereof, and as a  
15 further, separate and distinct affirmative defense thereto, said defendant alleges that answering  
16 defendant and its employees are immune from civil liability pursuant to the provisions of  
17 California Government Code section 818.2 and 821 to the extent that the injuries alleged in the  
18 complaint were caused wholly or in part by the adoption of or failure to adopt an enactment  
19 and/or a failure to enforce an enactment.

20 27. Further answering the complaint and the separate causes of action thereof, and as a  
21 further, separate and distinct affirmative defense thereto, said defendant alleges that plaintiff's  
22 action is barred by the equitable doctrines of laches, estoppel, and waiver, in that plaintiff has  
23 unreasonably delayed in taking action and/or making the claims alleged in this lawsuit with  
24 respect to the events alleged in the complaint, even though he knew or should have known in  
25 the exercise of reasonable diligence of the injuries and causes of injuries alleged in the  
26 complaint.

27 28. Further answering the complaint and the separate causes of action thereof, and as a  
28 further, separate and distinct affirmative defense thereto, said defendant alleges that plaintiff

1 has failed to exhaust administrative remedies, and his claims and each of them are barred  
2 thereby.

3 30. Further answering the complaint and the separate causes of action thereof, and as a  
4 further, separate and distinct affirmative defense thereto, said defendant alleges that plaintiff  
5 has failed to mitigate his damages, and said damages are reduced or eliminated in proportion to  
6 said failure to mitigate.

7 31. Further answering the complaint and the separate causes of action thereof, and as a  
8 further, separate and distinct affirmative defense thereto, said defendant alleges that it is  
9 immune from civil liability pursuant to the provisions of California Government Code section  
10 815.2 and California Civil Code section 47 to the extent any or all of plaintiff's allegations in  
11 this action against defendant are based on the alleged acts or omissions of a employee or agent  
12 of defendant in making communications in connection with a judicial, legislative, or  
13 administrative proceeding.

14 32. Further answering the complaint and the separate causes of action thereof, and as a  
15 further separate and distinct affirmative defense, defendant alleges it is immune from suit  
16 pursuant to the immunities and defenses contained in California Government Code sections  
17 810 through 898.5.

18 33. Further answering the complaint and the separate causes of action thereof, and as a  
19 further, separate and distinct affirmative defense thereto, said defendant alleges that answering  
20 defendant and its employees are immune from civil liability pursuant to the provisions of  
21 California Government Code Sections 818.2 and 821 to the extent that the injuries alleged in  
22 the complaint were caused wholly or in part by the adoption of or failure to adopt an  
23 enactment and/or the enforcement of or failure to enforce an enactment.

24 34. Defendant Contra Costa County alleges that the injury, if any, to plaintiff as alleged  
25 in the complaint was solely caused by official judicial and/or quasi-judicial acts, and that  
26 defendant Contra Costa County is absolutely immune from suit on that basis.

27 35. Defendant Contra Costa County alleges that it acted pursuant to mandatory duties  
28 imposed by law which it carried out with reasonable diligence, and for that reason is immune

1 from liability pursuant to California Government Code section 815.6.

2 36. Further answering the complaint and the separate causes of action thereof, and as a  
3 further, separate and distinct affirmative defense thereto, said defendant alleges that in the  
4 event that the trier of fact finds any liability on the part of this answering defendant, which  
5 liability is herein denied, this answering defendant will seek the benefit of several liability for  
6 non-economic damages as provided in California Civil Code section 1431-1431.5.

7 37. Further answering the complaint and the separate causes of action thereof, and as a  
8 further, separate and distinct affirmative defense thereto, said defendant alleges that answering  
9 defendant and its employees are immune from civil liability pursuant to the provisions of  
10 California Government Code Sections 815.2 and 820.4 to the extent that the injuries alleged in  
11 the complaint were caused wholly or in part by the act or omission of a public employee in  
12 executing or enforcing any law in the exercise of due care.

13 WHEREFORE, defendant Contra Costa County prays that plaintiff take nothing by the  
14 complaint, that plaintiff's complaint against it be dismissed in its entirety, for an award of  
15 costs, attorney fees, and expenses of suit against plaintiff pursuant to 42 U.S.C. section 1988  
16 and California Code of Civil Procedure section 1038, and for such other relief as justice may  
17 require and the law allow.

18 DEMAND FOR JURY TRIAL

19 Defendant demands jury trial of all claims in this action.

20  
21 DATED: May 2, 2008

SILVANO B. MARCHESI  
COUNTY COUNSEL

23 /S/

24 By: \_\_\_\_\_  
25 BERNARD KNAPP  
26 Deputy County Counsel  
27 Attorneys for Defendants  
28 CONTRA COSTA COUNTY,  
JOHN GIOIA, MARY PIEPHO,  
GAYLE UILKEMA, FEDERAL  
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